REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-22 are pending. Claims 1, 13 and 19 are amended, without prejudice.

No new matter is added by these amendments.

It is submitted that these claims are patentably distinct from the prior art cited by the Examiner, and that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments and remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the amended recitations in the claims is found throughout the specification.

II. 35 U.S.C. §103 REJECTIONS

Claims 1-22 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,442,093 to Pargee in view of U.S. Patent No. 6,591,247 to Stern. Applicants disagree. None of the cited documents teach, enable, suggest or motivate a skilled artisan to practice the Applicants' invention.

The instant claims are directed to a business management method and apparatus wherein, for example, information about earnings and expenses is obtained using an information processing element based on expenses incurred by content providers supplying users with recording devices compatible with contents offered by the providers, on content subscription fees

paid by said users for receiving said contents, and on earnings derived from services and/or advertisements included in said contents; and fees to be paid for said services and/or said advertisements are controlled using a controlling element in accordance with said information about said earnings and expenses thus obtained.

More specifically, Applicants' invention is directed to managerial methods and devices. None of the cited documents, either alone or in combination, teach, suggest or motivate a skilled artisan to practice such an invention.

The Pargee patent relates to a visual service using a communication channel on an intermittent, "burst" basis. The frames transmitted are sent to a television during a break in a main television program service. The technology is consumer-oriented/manipulated in that a consumer, such as a television viewer, selects which frame or frames are to be viewed. Pargee fails to teach or suggest, however, a managerial method and system, as instantly claimed, wherein, for example, information about earnings and expenses incurred by content providers are obtained based upon the providers' expenses for supplying users with recording devices, fees paid by users and earnings from services and advertisements.

The Stern patent is equally defective and does not remedy the inherent deficiencies in Pargee. The Stern patent relates to a database that provides information to a consumer positioned near a point-of-sale at a store. As in Pargee, the technology recited in the Stern patent is consumer-oriented, not managerial as instantly claimed. Also like Pargee, the Stern patent fails to teach, suggest or motivate a skilled artisan to practice a managerial method or system wherein, for example, information about earnings and expenses incurred by content providers are obtained based upon providers' expenses, fees paid by users and earnings from services and advertisements.

Applying the Examiner's reasoning, the combination of the Pargee and Stern patents would result in burst-transmitted frames of video signal to a television viewer during a brief break in a television program (Pargee), wherein the video signal contains product information on a product about which the viewer is interested at a kiosk in a store (Stern). Clearly, a skilled artisan would not be motivated to combine Pargee and Stern in order to practice the instantly claimed invention.

It is well-settled that "obvious to try" is not the standard upon which an obviousness rejection should be based. *See In re Fine*. And as "obvious to try" would be the only standard that would lend the Section 103 rejection any viability, the rejection must fail as a matter of law. Therefore, applying the law to the instant facts, the rejection is fatally defective and should be removed.

Consequently, reconsideration and withdrawal of the Section 103 rejection are believed to be in order and such actions are respectfully requested.

III. 35 U.S.C. §101 REJECTION

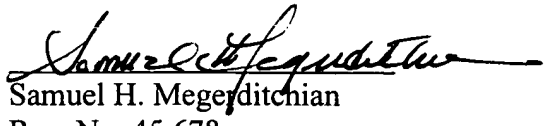
Claims 1, 13 and 19 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. The rejection is traversed.

The amendments to claims 1, 13 and 19 render the rejection moot. Consequently, reconsideration and withdrawal of the Section 101 rejection are respectfully requested.

CONCLUSION

By this Amendment, claims 1-22 should be allowed; and this application is in condition for allowance. Favorable reconsideration of the application, withdrawal of the rejections and objections, and prompt issuance of the Notice of Allowance are, therefore, all earnestly solicited.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: 

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